

REMARKS

The Examiner has rejected the claims at issue for the reasons of record and requested restriction for three species. Such request pertains to particular ways that Zingibain affects food intolerance in a subject that includes reducing food intolerance, removing food intolerance, reducing allergenicity, and the like.

Applicant hereby provisionally elects reducing food intolerance. The claim readable on this species is currently amended claim 36. Such election has been made with traverse.

Applicant respectfully asserts the examiner's restriction requirement has been improperly made. One of the objects of the present invention is to provide a general method of affecting food intolerance in a subject by administering Zingibain to food in order to reduce food intolerance, remove food intolerance, reduce allergenicity, and the like. As such, Applicant respectfully asserts the possible particular affects the Zingibain in the food is having on a subject are so related to reducing food intolerance as to generally have the same properties regardless of the particular affect, such as reducing or removing food intolerance, reducing allergenicity, and the like. Therefore, since the focus of certain embodiments of the present invention are to provide methods of affecting food intolerance by administering Zingibain to food, regardless of the particular affect, Applicant respectfully submits that the three species have unity of invention and also form a single inventive concept.

Furthermore, even if the Examiner were to argue that the three affects on food intolerance are patentably distinct species, 37, C.F.R. §1.141(a) clearly allows an Applicant to claim a reasonable number of distinct species, as long as the application also includes an allowable generic claim that embraces the distinct species. Applicant respectfully asserts that the generic claim presented in claim 35 meets this burden, if the Examiner were to later raise it.

In view of the foregoing, Applicant respectfully requests that the restriction requirement be withdrawn upon further consideration by the Examiner. If the Examiner is not willing to reconsider his position, the provisional election of reducing food intolerance

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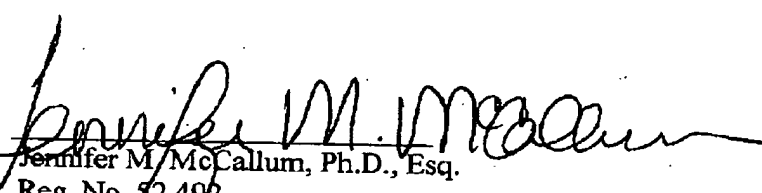
should not be construed as an abandonment of the subject matter contained within the nonelected species. As such, Applicant expressly reserves the right to file one or more divisional applications drawn to such nonelected species.

In view of the above provisional election, an Office Action on the merits is respectfully requested at an early time.

If the Examiner notes any further matters which would be expedited by a telephonic interview, she is requested to contact Dr. Jennifer M. McCallum at the telephone number listed below.

Respectfully submitted,

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Date


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